UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

JAMES MURPHY, et al.,	***)***	
	)	
Plaintiffs	***)***	
	)	
v.	***)***	***Docket No. 98-139-P-H***
	)	
UNITED STATES OF AMERICA,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The plaintiffs, husband and wife, seek a declaratory judgment to the effect that real property purchased by them from one Donald Rivers is not encumbered by a lien filed by the Internal Revenue Service against Rivers for unpaid federal taxes. The defendant removed this action to this court from the Maine Superior Court (York County). The plaintiffs and the defendant have moved for summary judgment. I recommend that the court grant the defendant's motion.

I. Summary Judgment Standard

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute is resolved

favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party . . . .'" *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Cadle Co. v. Hayes*, 116 F.3d 957, 959 (1st Cir. 1997). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, "the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue." *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995) (citing *Celotex*, 477 U.S. at 324); Fed. R. Civ. P. 56(e). "This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof." *International Ass'n of Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

The mere fact that both parties seek summary judgment does not render summary judgment inappropriate. 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* ("Wright, Miller & Kane") § 2720 at 19. For those issues subject to cross-motions for summary judgment, the court must draw all reasonable inferences against granting summary judgment to determine whether there are genuine issues of material fact to be tried. *Continental Grain Co. v. Puerto Rico Maritime Shipping Auth.*, 972 F.2d 426, 429 (1st Cir. 1992). If there are any genuine issues of material fact, both motions must be denied as to the affected issue or issues of law; if not, one party is entitled to judgment as a matter of law. 10A Wright, Miller & Kane § 2720 at 24-25.

II. Factual Background

The following material facts are appropriately supported in the summary judgment record. On February 6, 1996 Donald P. Rivers was the high bidder at a foreclosure sale for property located at 31 Ocean Avenue Extension, York Beach, Maine. Affidavit of Donald P. Rivers ("Rivers Aff.") (Docket No. 17) ¶ 2. The purchase price was $180,100, of which Rivers paid $5,000 at the time of his successful bid. *Id*. ¶ 3. On March 27, 1996 Rivers executed but did not deliver a quitclaim deed for this property to the plaintiffs, James and Mary Murphy. *Id*. ¶ 6. The purchase price for the sale of the property to the plaintiffs by Rivers was $200,300.[1] Also on March 27, 1996 the plaintiffs presented Rivers with fours checks in the total amount of $25,300, Exh. M to United States' Statement of Undisputed Facts ("Defendant's SMF") (Docket No. 11), as a downpayment on the property, Deposition of James F. Murphy ("J. Murphy Dep."), Exh. C to Defendant's SMF, at 69.

Rivers arranged for the plaintiffs to receive financing for the remainder of the purchase price from MLA Investments, an entity created for the purpose of making investments by Mary Lou Armbruster, an elderly woman for whom Rivers's wife was providing daily care. *Id*. at 62, 64-65; Deposition of Donald P. Rivers ("D. Rivers Dep."), Exh. A to Defendant's SMF, at 102-06; Deposition of Mary T. Rivers ("M. Rivers Dep."), Exh. B. to Defendant's SMF, at 50; 66-68; 73-74; 89; 94. On April 10, 1996 MLA Investments issued a check to the Federal National Mortgage Association ("FNMA") in the amount of $175,100, Exh. L to Defendant's SMF, the balance due on Rivers' bid. The plaintiffs had executed a promissory note in the principal amount of $175,000 to

[1] This only place in the summary judgment record where this number appears is the complaint. Complaint (Docket No. 1A) ¶ 3. Since this allegation is contested by the answer, it cannot provide the necessary basis for a statement of material fact in support of a motion for summary judgment. *Freund v. Fleetwood Enter., Inc*., 755 F. Supp. 1090, 1092 n.2 (D. Me. 1991). However, because the plaintiffs do not in fact contend that they agreed to pay any other price, I will assume for purposes of the motions that this is an accurate figure.

MLA Investments and a mortgage of the subject property to MLA Investments on March 27, 1996. Exhs. O & P to Defendants' SMF. Upon receipt of the money from MLA Investments, on or after April 10, 1996, FNMA delivered to Rivers a quitclaim deed to the subject property that was dated February 8, 1996. Exh. I to Defendant's SMF; Rivers Aff. ¶ 4. Rivers delivered his quitclaim deed for the subject property to the plaintiffs after April 10, 1996. Rivers Aff. ¶ 6. Rivers cashed all of the plaintiffs' checks to him after April 10, 1996. *Id*. ¶ 7.

The quitclaim deed from FNMA to Rivers was recorded in the York County Registry of Deeds on May 9, 1996 at 8:35 a.m. at Book 7823, Pages 169-71. Exh. I to Defendant's SMF. The quitclaim deed from Rivers to the plaintiffs was recorded in the York County Registry of Deeds on May 9, 1996 at 8:35 a.m. at Book 7823, Pages 172-73. Exh. N to Defendant's SMF. The mortgage from the plaintiffs to MLA Investments was recorded in the York County Registry of Deeds on May 9, 1996 at 8:35 a.m. at Book 7823, Pages 174-75. Exh. P to Defendant's SMF.

On May 28, 1993 the Internal Revenue Service ("IRS") recorded a Notice of Federal Tax Lien against Donald Rivers in the York County Registry of Deeds in the amount of $86,916.02. Exh. F to Defendant's SMF. As of May 6, 1998 this lien had not been discharged. Exh. E to Defendant's SMF.

III. Discussion

The defendant argues that the plaintiffs do not own the subject property, because Rivers' quitclaim deed dated March 27, 1996 cannot convey title to after-acquired property, and, in the alternative, that Rivers acquired rights in the property upon receipt of the FNMA quitclaim deed to which the IRS lien attached. The plaintiffs contend that they own the property because, under Maine law, a quitclaim deed is only effective upon delivery, and that Rivers only held title to the property,

if at all, as the trustee of a resulting trust, so that the IRS lien could not attach as a matter of law.

The defendant bases its argument that Rivers' quitclaim deed to the plaintiffs did not convey title to them on the fact that the deed is dated March 27, 1996, before Rivers obtained legal title to the property, by delivery to him of the FNMA deed dated February 8, 1996, on or after April 10, 1996. It contends that "a quitclaim deed conveys only that interest that the grantor holds at the time the deed is executed." Memorandum of Points and Authorities in Support of United States' Motion for Summary Judgment ("Defendant's Memorandum") (Docket No. 10) at 8. The defendant cites *Giobbi v. Bramson*, 560 A.2d 1079, 1080 (Me. 1989), and *Manson v. Peaks*, 103 Me. 430 (1908), in support of its position. State law controls on the questions of the nature and existence of the property rights against which a federal tax lien is asserted. *Geiselman v. United States*, 961 F.2d 1, 6 (1st Cir. 1992). *Giobbi* deals with a deed purporting to convey property rights that were never acquired. 560 A.2d at 1080. *Manson* deals with property rights that were acquired after the quitclaim deed at issue was delivered, 103 Me. At 432, not after it was executed but before it was delivered, as is the case here. Accordingly, neither opinion is dispositive.

The plaintiffs correctly point out that, under Maine law, "[t]he conveyance of title to property requires a manual transfer of the deed and an intent to pass title between a grantor and grantee." *Poling v. Northup*, 652 A.2d 1114, 1115 (Me. 1995). *See also Paine v. Paine*, 458 A.2d 420, 421 (Me. 1983) ("It is axiomatic that a deed must be delivered in order for a conveyance of title to occur.") Rivers' undisputed affidavit establishes that his quitclaim deed to the plaintiffs was not delivered until after he had received the deed from FNMA and that he did not intend to convey title to the plaintiffs until that time. That is sufficient to defeat the defendant's argument. Title to the property was conveyed to the plaintiffs by Rivers' quitclaim deed.

The plaintiffs do not dispute the defendant's contention that, if the federal tax lien attached to the subject property before they acquired title to it, that lien has priority over their interest because the defendant provided constructive notice of the lien by recording it in the York County Registry of Deeds before the transfer of title to the plaintiffs. *See* 26 U.S.C. § 6323(a) & (f); *Progressive Consumers Fed. Credit Union v. United States*, 79 F.3d 1228, 1234-35 (1st Cir. 1996).

The tax lien at issue here is created by 26 U.S.C. § 6321:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

The lien arises at the time the assessment is made and continues until the liability is satisfied "or becomes unenforceable by reason of lapse of time." 26 U.S.C. § 6322.

> The statutory language "all property and rights to property," appearing in § 6321 . . ., is broad and reveals on its fact that Congress meant to reach every interest in property that a taxpayer might have. "Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes." *Glass City Bank v. United States*, 326 U.S. 265, 267 (1945).

United States v. National Bank of Commerce, 472 U.S. 713, 719-20 (1985) (citation omitted).

The plaintiffs argue that Rivers took title to the property only as the trustee of a resulting trust of which they were the beneficiaries, making his brief ownership an interest to which the tax lien could not attach. In support of this argument they cite *United States v. Johnson*, 200 F. Supp. 589 (D. Ariz. 1961), and *Hobson v. United States*, 168 F. Supp. 117 (E.D. Mich. 1958). In *Johnson*, the court held that land held by the taxpayer, at the time the tax lien against him was filed, in trust for his mother, to whom he subsequently reconveyed the property after using it as security for a bank loan,

was neither property nor a right in property of the taxpayer and that the tax lien therefore did not attach to the land. 200 F. Supp. at 591, 592. The court suggests, but does not hold, that the conveyance from the mother to the taxpayer, without consideration, created a resulting trust. *Id*. at 592. In *Hobson*, the taxpayer agreed, in return for $100, to secure title to certain property for two others, who paid the deposit and the rest of the purchase price. 168 F. Supp. at 117. The seller executed a quitclaim deed for the property in the name of the taxpayer, which was delivered to the plaintiffs who had actually paid for the property. *Id*. at 117-18. The taxpayer executed and delivered a warranty deed for the property to the plaintiffs approximately ten days later. *Id*. at 118. The court held that the taxpayer had acted as an agent for the plaintiffs and "never acquired more than a bare legal title to the lots in question," and concluded that the property was not subject to the tax liens against the taxpayer. *Id*. at 118-19. The opinion does not discuss a trust of any kind.

The facts in the summary judgment record in this case make it quite clear that Rivers was not acting as the plaintiffs' agent when he purchased the property at the foreclosure sale. Rivers bid on the property without knowing what he was going to do with it. D. Rivers Dep. at 67. He first considered selling the property to the plaintiffs after he had purchased it at the foreclosure sale. *Id*. at 78. Accordingly, the *Hobson* opinion is of little value for the case at hand. Possible application of the *Johnson* opinion requires the court to consider whether a resulting trust arose under Maine law in the circumstances presented here.

Under Maine law, "[a] resulting trust arises by implication of law when the purchase money is paid by one person out of his own money, and the land is conveyed to another." *Herlihy v. Coney*, 99 Me. 469, 471 (1905)*; see also Staples v. Bowden*, 105 Me. 177, 181 (1909). The money may be paid by another for the beneficiary, so long as the beneficiary incurs an obligation to repay. *Herlihy*,

99 Me. at 471; *see also Wood v. LeGoff*, 152 Me. 19, 21 (1956) (estranged widow entitled to statutory share in property for which husband paid purchase price but had title conveyed to three others, successively). Evidence to establish the existence of a resulting trust must be "the most satisfactory and convincing evidence" because the creation of such a trust by operation of law is "in defiance of the statute of frauds [and] subversive of paper title." *Anderson v. Gile*, 107 Me. 325, 328 (1910). "[S]uch evidence must be clear, strong, unequivocal, unmistakable, and must establish the fact of a payment by the alleged beneficiary beyond a doubt." *Id*. at 329 (citation omitted).

Here, the bulk of the purchase price for the property paid to FNMA came from MLA Investments in the form of a mortgage which the plaintiffs were obligated to repay. However, the $5,000 downpayment was made by Rivers, before the plaintiffs were involved in any way. The plaintiffs assert that "[t]he purchase price was paid by the [plaintiffs] ($5,000) and MLA Investments ($175,100)," Plaintiffs' Memorandum of Law in Support of Objection to Motion for Summary Judgment, etc. ("Plaintiffs' Memorandum") (Docket No. 16) at 5, but the only $5,000 paid by the plaintiffs was to Rivers, in one check among four for a total of $25,300 all written on March 27, 1996. That money did not go to FNMA. This fact is significant because the payment by the alleged beneficiary or a third party that creates the resulting trust "must be a part of the original transaction." *Merrill v. Hussey*, 101 Me. 439, 445 (1906). *See, e.g.*, *Caudill v. Beil*, 469 N.E.2d 257, 259, 261 (Ill. App. 1984) (defendant who provided $8,000 of total $10,000 downpayment entitled to 8/50 interest in property where plaintiff paid remaining $2,000 of downpayment and $40,000 balance due; Illinois law). When Rivers entered into a purchase and sale agreement with FNMA for the property, Exh. H to Defendant's SMF, he did not intend that the plaintiffs would pay the remaining portion of the purchase price, and the plaintiffs did not intend to buy the property.

The plaintiffs argue, citing only an illustration to section 457 of the Restatement (Second) of Trusts,[2] that the time at which the resulting trust arises is not the time at which the purchase and sale agreement is executed but rather the time when the deed is delivered. Plaintiffs' Memorandum at 6-7. Section 457 provides: "Where a transfer of property is made to one person, no resulting trust arises merely because another person subsequently pays or assumes an obligation to pay for the property." Comment *a* to this section, entitled "Purchase on credit of transferee," provides:

> Where the transferee undertakes an obligation to the vendor to pay the purchase price, the mere fact that another person subsequently pays the purchase price is not sufficient to create a resulting trust in his favor, although at the time of the payment it is agreed that he shall have the beneficial interest in the property. A resulting trust does not arise from the payment of the purchase price unless at the time of the purchase the other person pays the purchase price or agrees to pay it.

While the purchase and sale agreement for this property does set forth the undertaking by Rivers to pay the purchase price to the vendor, it requires that payment within 30 days, in cash or certified check.[3] Purchase and Sale Agreement, Exh. H to Defendant's SMF, ¶ 4. The illustration upon which the plaintiffs rely follows comment *b* to section 457, which is entitled "Purchase for cash."

> X is the owner of Blackacre. B purchases Blackacre from X, paying the purchase price in cash. Subsequently A and B make an oral agreement under which A agrees to pay B the amount of the purchase price and B agrees to convey Blackacre to A. A pays B the amount of the purchase price. B does not hold Blackacre upon a resulting trust for A, but A is entitled to recover

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[2] The Maine Law Court has not specifically adopted section 457, but it has invoked or cited with approval more than 25 other sections of the Restatement (Second)of Trusts, *e.g.*,*Bombardier Capital, Inc. v. Key Bank of Maine*, 639 A.2d 1065, 1067 (Me. 1994) (§ 202); *Wiktorowicz v. Haley*, 251 A.2d 794, 796 n.2 (Me. 1969) (§ 179), including section 440, the general rule concerning the creation of a resulting trust, *Grishman v. Grishman*, 407 A.2d 9, 12 n.7 (Me. 1979). It is therefore reasonable to expect that the Law Court will adopt section 457 when appropriate factual circumstances are presented.

[3] In this case, payment was not made until April 10, 1996, more than 60 days after the date of the purchase and sale agreement.

from B the amount which he paid B.

Contrary to the plaintiffs' argument, this illustration does not establish that it is the time of delivery of the deed to the property that determines whether a resulting trust occurs. This illustration assumes that the initial purchase price has already been paid in full by the party alleged to be a resulting trustee, so the time of delivery of a deed is irrelevant. Because the facts of this illustration are not identical to the facts in the case at hand, the plaintiffs also argue that section 457 does not apply. They read too much into the alternative illustration. The language of section 457, standing on its own, does suggest that there is no resulting trust under the circumstances present here.

This impression is reinforced by the current edition of Professor Scott's authoritative treatise on the law of trusts. At section 457 it provides:

> Suppose that *A* paid the purchase price after *B* had contracted to buy the land, but before the conveyance was made to *B*. It would seem that no resulting trust should arise in favor of *A*. Prior to the oral agreement with *A*, *B* had the beneficial though not the legal title. An oral contract to transfer the beneficial interest to *A* would not be binding, nor would an oral contract to convey the legal title to *A* be binding. A resulting trust will not arise in *A*'s favor unless he pays the purchase price at or prior to the time when *B* receives the beneficial interest. It would seem also that if *A*'s payment was made after *B* had acquired a valid option, no resulting trust would be raised. But if *B* had only an oral and therefore unenforceable contact with the owner prior to the payment by *A*, a resulting trust should arise on the payment of the purchase price by *A*.

A. Scott & W. Fratcher, *The Law of Trusts* § 457 (4th ed. 1995) at 283. While the plaintiffs could argue that their agreement to pay the remaining $175,100 for the property in this case was in writing, as represented in the mortgage and note, there is no written agreement in which they agree to pay FNMA. Indeed, there is no evidence of an oral agreement to that effect. While James Murphy testified that he thought he was buying the property from a bank, Murphy Dep. at 54-55, there is no evidence in the summary judgment record that he or his wife entered into an agreement with Rivers,

written or oral, that they would pay FNMA, that Rivers would transfer title to them or that he would acquire the title in their interest. The plaintiffs did not pay the purchase price at or before the time when Rivers, with his own $5,000, acquired a beneficial interest in the property. Accordingly, no resulting trust arose,[4] and the federal lien attached to the property when it passed into Rivers' ownership, however briefly.

IV. Conclusion

For the foregoing reasons, I recommend that the defendant's motion for summary judgment be **GRANTED** and that the plaintiffs' motion for summary judgment be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 4th day of February, 1999.

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David M. Cohen
United States Magistrate Judge

[4] *But see Neusted v. Skernswell*, 159 P.2d 49, 51-52 (Cal. App. 1945) (criticizing Scott on this point).